Modifying New Mexico's Gross Receipts and Compensating Taxes to Comply with the Streamlined Sales Tax Project

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I. Introduction

The Streamlined Sales Tax Project (SSTP), organized in March 2000, is a cooperative effort by 44 states and the District of Columbia to simplify and modernize sales and use tax administration. The main impetus to the Project was the growing scale of sales by remote sellers – businesses that sell products in a state using the internet, mail order, or telephone without having a physical presence in the state. The U.S. Supreme court has ruled in two cases that such sales are not taxable, in part because the cost of collection would be too high given the large number of taxing districts and the variation among states in tax rates and in what is taxable.[1] Although these decisions rule out collecting sales taxes from remote sellers, states can nevertheless impose compensating or use taxes on purchasers of products from remote vendors. But it is costly to comply with and enforce compensating and use taxes. Consequently, purchases from remote vendors often escape taxation. New Mexico levies a state-level compensating tax on purchases from out-of-state vendors, and enforces the tax on business purchases but not household purchases.[2]

The SSTP is supported by businesses, which incur the high costs of complying with sales and use tax laws that vary both across and within states, and by state governments, which lose revenue from remote sellers because of the complexity of current taxes.[3]

Section II of this report provides a brief description of the SSTP – its goals and procedures. Section III discusses issues that New Mexico faces in deciding whether to modify its gross receipts tax (GRT) to bring it into line with the requirements of the SSTP. Section IV is a summary.

[1] National Bellas Hess, Inc. v. Department of Revenue, 386U.S. 753(1967) and Quill Corp. v. North Dakota, 504 U.S. 298 (1992). As defined by these decisions, a seller lacks physical presence in a state if it does not have property, employees, or other agents in the state.

[2] NMSA 7-9-7.1prohibits the Taxation and Revenue Department from taking any action to enforce collection of the compensating tax due on individual, non-business purchases from out-of-state vendors.

[3] Bruce et al. (2009) estimate that annual national state and local sales tax losses on e-commerce will grow to $11.4 billion by 2012, with a six-year loss (2007-2012) totaling $52.1 billion. Note that this estimate *does not* include the revenue losses from failing to fully tax other types of remote commerce – mail orders, telephone orders, and deliveries made across state lines by unregistered businesses. Also, the SSTP reports that under the current voluntary system 1,156 retailers have collected over $300 million in sales tax for the streamlined states. This is a very small fraction of the sales tax that goes uncollected, which has been estimated to be as high as $15 billion per year. See Streamlined Sales Tax Governing Board. "White Paper on Streamlining State Sales Taxes." http://www.streamlinedsalestax.org/DOCUMENTS/White%20papers/SST%20white%20paper.pdf

II. Description and History of the Streamlined Sales Tax Project

In response to the growth of nontaxable sales as well as the increasing complexity of state and local sales taxes, the SSTP was organized in March 2000.[4] Its broad purpose has been to simplify sales and use tax collection and administration by retailers and states. The Project conducts its work through a steering committee and a number of work groups. Project participants are primarily state revenue department administrators and representatives of state legislatures and local governments. A wide variety of businesses have also participated in the project.

On December 22, 2000, the SSTP approved the Uniform Sales and Use Tax Administration Act (USUTAA), which is the enabling legislation that a state enacts to enter into an agreement with other states to simplify and modernize sales and use tax administration. This Act does not require any amendments to a state's sales and use tax law. New Mexico became an advisor state in 2005 through enactment of this enabling legislation.[5]

On November 12, 2002, the SSTP approved the Streamlined Sales and Use Tax Agreement (SSUTA); this agreement became effective for participating states on October 1, 2005.[6] The stated purpose of the SSUTA is "to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance (SSUTA 2008, Sec. 102)."

The SSUTA spells out the conditions that a state's tax codes must satisfy to achieve the simplifications and uniformity required of participating states. When a state enters into the SSUTA it is only agreeing to modify its sales and use tax laws to meet the conditions stated in the agreement. Therefore, adopting the SSUTA does not change any aspect of a state's existing sales tax system; it is merely a statement of intent. A state's legislature must subsequently act to align its statutes with the provisions of the agreement. Some states will require only minor changes to current law to implement the requirements of the Agreement. Other states with more complicated sales tax laws may require significant changes to current law to be in accord with the agreement.

The SSTP's current focus is mainly on improving sales and use tax administration. But another goal is to obtain even-handed treatment of in-state and out-of-state sellers. Achieving even-handed treatment to the fullest extent possible will require federal legislation, which has been supported by the SSTP in each recent session of Congress but has so far failed to pass.[7]

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[4] For discussion of antecedents to the SSTP see Swain and Hellerstein (2005).

[5] Sections 7-5A-1 through 7-5A-9 NMSA 1978, "Streamlined Sales and Use Tax Administration Act." http://www.tax.state.nm.us/regs/Streamlined_Sales_and_Use_Tax_Administration_Act.pdf.

[6] For a brief overview of the SSUTA see Streamlined Sales Tax Governing Board. "White Paper on Streamlining State Sales Taxes."
http://www.streamlinedsalestax.org/DOCUMENTS/White%20papers/SST%20white%20paper.pdf.

[7] For a recent assessment of the status of such federal legislation, see "Timeline Unknown for Introducing Streamlining Bill," *State Tax Notes*, Vol. 52, No. 4, April 27, 2009, p. 290. One concern highlighted in this commentary is that states are waiting to join the SSUTA until passage of federal legislation that would enable states

Achieving the simplification and uniformity of sales and use taxation that the SSTP is trying to bring about will weaken the case against federal legislation that requires out-of-state sellers to collect the tax on their sales within a state.[8] The rapid growth of internet and other remote sales also weakens the case against such legislation.

Even in the absence of federal legislation, improvements in data collection and processing technology have significantly reduced the cost of collecting sales and use taxes since the *Quill* decision was rendered in 1992. States' adoption of the SSUTA works in the same direction, decreasing further the costs that remote sellers incur in collecting and remitting taxes on their sales into a state. Consequently, in a future challenge to the *Quill* decision, the Court may find that *Quill*'s rationale that administrative burdens of collecting taxes from e-commerce are too heavy no longer applies. If the Court did reach such a decision, there would be no need for the SSUTA.

Current participation

Currently, 44 states and the District of Columbia participate in the SSTP. Of the remaining states, 5 are non-sales tax states (AK, DE, MT, NH, OR); only one sales tax state (CO) does not participate. There are four categories of state participation in the SSTP.

- Full member, which requires a state to be in compliance with the SSUTA through its laws, rules, regulations, and policies. These states are: AR, IA, IN, KS, KY, MI, MN, NC, ND, NE, NJ, NV, OK, RI, SD, VT, WA, WY, and WV.
- Associate member, which requires that a state is expected to be in compliance on or before July 1, 2009. These states are: OH, TN, and UT.
- Advisor, which requires that a state enact enabling legislation allowing it to participate in the SSTP. The District of Columbia and the following states participate as advisors: AL, AZ, CA, CT, FL, GA, HI, IL, LA, MA, MD, ME, MO, MS, NM, NY, SC, TX, VA, and WI.
- Observer, which allows a state to attend SSTP meetings. These states are: ID, and PA.

Only Full and Associate member states can vote on the Governing Board. Associate members cannot vote on amendments to SSUTA, rule interpretations, or certifications of state compliance with SSUTA. States considering bills to conform to SSUTA in 2009 are CA, FL, GA, HI, IL, MD, MA, MO, TX, VA, WI (State Tax Notes, Feb. 9, 2009).

Requirements for membership

The SSUTA sets out a number of conditions that participating states must meet (Article III). These requirements are intended to reduce the costs of administering and complying with state and local sales and use taxes. A listing of the main requirements follows.

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to collect taxes on remote sales, while federal lawmakers are reluctant to enact such legislation until more states join the SSUTA.

[8] See McLure and Hellerstein (2004) for discussion of issues arising in connection with federal legislation that would allow states to require collection of taxes on remote sales if they simplify their tax systems in accord with the SSUTA.

Uniform definitions. States must follow the SSUTA definitions for certain items, such as food, drugs, lease or rental, tangible personal property (Section 327). State legislatures choose what is taxable or exempt in their states. However, participating states are to use the common definitions for key items in the tax base and are not to deviate from these definitions. Consequently, businesses making sales into a streamlined state only need to know whether the products or services they sell are taxable or exempt. They no longer have to wonder how one state's definition differs from another state's. The SSUTA does not prevent or rule out taxing intermediate (business-to-business) sales. Definitions of products are set out in Appendix C, Part II of the SSUTA.

Uniform sourcing rules. States must have uniform and simple rules for assigning sales of tangible personal property, digital property, and services to state and local governments.[9] With uniform rules, a business does not have to worry that two states will try to tax the same sale; a business has clear rules on which state's sales tax to collect. Sections 309 – 315 set out these rules.[10] Sections 309, 310, and 311 provide sourcing rules for most transactions. These rules are currently (2009) destination/delivery based, requiring that a sale be sourced to the destination of the item sold according to a specified hierarchy based on available information (for example, business location of the seller for over- the-counter sales, location where receipt by the purchaser occurs for most mail-order sales). Only in the absence of any information about the destination of the sale do the sourcing rules default to the location of origin (for example, the location from which an item was shipped).

But SSUTA Section 310.1, which becomes effective January 1, 2010, allows for election of origin-based sourcing of *intra-state sales* in states that have local jurisdictions that levy sales or use taxes. [11] More specifically, Section 310.1 defines the conditions under which states may elect to source retail sales, *but not lease or rental*, of tangible personal property or digital goods to the location where the order is received by the seller. Such origin-based sourcing is available only for intra-state sales; section 310.1 does not alter the destination sourcing of inter-state sales. With this origin-based sourcing, only the sales tax for the location where the order is received by the seller may be levied; no additional tax based on the location where the product is delivered to the purchaser may be levied. And the purchaser is not entitled to any refund if the combined state and local rates at the location where the product is received by the purchaser is lower than the rates where the order is received by the seller.[12]

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[9] For additional discussion of sourcing issues see Swain and Hellerstein (2004) and Swain (2006). Swain (2006) explains sourcing options for local sales and use taxes.

[10] Section 312, pertaining to products that have multiple points of use was repealed on December 14, 2006.

[11] "The provisions of this section shall be fully effective for all purposes on or after January 1, 2010, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the agreement other than sourcing sales of tangible personal property and digital goods…." (Streamlined Sales and Use Tax Agreement, 2008, p. 24).

[12] Swain (2006) suggests that origin-based sourcing of local taxes may discriminate against interstate commerce and therefore be questionable on constitutional grounds. To illustrate, suppose the state tax rate is 5 percent and the local tax rate is 2 percent in locality A but only 1 percent in locality B. If purchases from both in-state and out-of-state vendors are destination sourced, then a buyer in locality A would pay a combined state and local tax rate of 7

Direct mail sourcing is governed by Sections 313 and 313.1, with the latter allowing for origin sourcing of intra-state mail. Internet access service is sourced in accordance with Section 314, and sourcing of telecommunications and ancillary services is governed by Section 315. Florist sales are sourced as defined by each member state. The retail sale or transfer of watercraft, modular homes, manufactured homes, and mobile homes are sourced according to the requirements of each member state.

Uniform state tax base. Within any state, the state and all local governments must use the same tax base. This requirement, by removing taxpayer burdens due to non-uniform local bases, weakens the case against taxing remote sellers and decreases compliance costs for all taxpayers in member states. Tax bases can vary across states, and there is no restriction against taxing intermediate (business-to-business) sales (Section 302). The SSUTA does not require a member state to impose a tax on or provide an exemption from tax for any product, item, or service (Section 103). However, as required by Section 327, the definitions of products and services that are either taxed or exempted from tax must correspond to the definitions set out in Appendix C, Part II of the SSUTA. Section 302 does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. Therefore, compliance with SSUTA would not require changes in the definitions and administration of taxes on these items.

State and local rate simplification. No member state can have multiple *state* sales and use tax rates on items of personal property or services, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the SSUTA (Section 308). This allows states to exempt food and drugs at the state level while taxing them at the local level. Each local taxing jurisdiction can have only one sales and use tax rate; its sales and use tax rates must be equal if it chooses to levy both taxes. But it can choose to not levy a use tax. To further simplify sales and use taxes, SSUTA eliminates tax caps and thresholds that are based on the type or value of purchased item (Section 323).

These restrictions do not apply to sales or use taxes levied on electricity, piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes (Section 308 C). Electricity and heating fuels must be either included in or excluded from both state and local tax bases, but if included the state and each of its localities can apply tax rates that differ from their general sales and use tax rates. In contrast, sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes are excluded from both rate and base uniformity requirements. States and localities can make independent decisions about whether and how much to tax these sales (see Section 302).

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percent regardless of whether she buys from a locality B vendor or an out-of-state vendor. *Destination sourcing of local taxes provides even-handed treatment of in-state and out-of-state vendors*. In contrast, if local taxes are origin sourced, a locality A buyer would pay a combined rate of only 6 percent if she purchases from a locality B vendor. *In this and similar cases, origin sourcing of local taxes favors the in-state over the out-of-state vendors, which Swain suggests is constitutionally questionable.*

State level administration. All state and local sales and use taxes must be collected by the state. Businesses will no longer file tax returns with each local government within which it conducts business in a state. All audits are either conducted or authorized by the state; local jurisdictions do not conduct independent sales or use tax audits of sellers (Section 301). Uniform tax returns are required (Section 318) and uniform rules are required for remittances (Section 319) and collection of bad debts (Section 320).

These provisions of the SSUTA do not apply to taxes on transactions in Native American tribal areas, since they are not subdivisions of the state. Consequently, whether and how tribal sales taxes are levied and administered would not be considered in determining whether a state is in compliance with SSUTA. And in complying with SSUTA, New Mexico would be able to either continue or alter existing arrangements that govern the levying and administration of taxes on sales within tribal areas. [13]

Taxability matrix. A member state must provide and maintain a downloadable taxability matrix that shows the taxability of all items specified in the SSUTA. It must also provide notice of changes in the taxability of the products or services listed in the matrix. Sellers that rely on the matrix cannot be penalized for underpayment of taxes because of errors in the matrix (Section 328).

Rates and boundaries databases. Each full-member state must provide and maintain databases of the boundaries of the jurisdictions levying taxes within the state and the sales and use tax rates applicable in those jurisdictions. These electronic databases are downloadable, free of charge. They match a local tax rate with each 9 digit zip code. They are available to any business (seller), which can look up one address at a time on-line or download the entire database. Since local taxing jurisdictions cannot always be uniquely defined by zip-code areas, addresses may be required to fully define rates and boundaries databases. States certify the accuracy of the databases so that sellers relying on the databases cannot be penalized. Businesses using the databases are not liable for charging too much or too little tax because of errors in the databases. State and local governments are responsible for notifying taxpayers of rate and boundary changes. (Sections 305, 306, 307).

Seller registration. A seller registering under the Agreement in one member state is thereby registered in all member states (Section 303). States must provide for on-line registration (Section 401).

Remitting payments. When registering, a seller may select one of three methods of paying taxes or another method allowed by state law (Section 403). With what is termed model 1, a seller selects a Certified Service Provider (CSP) as the agent to perform all of its sales and use tax functions, other than its obligation to remit tax on its sales. With model 2, a seller uses a

[13] The SSTP is currently considering whether and how tribal governments might be allowed to become SSTP members. There are several ways this might be done. For example, one regime might treat tribes as political subdivisions of the state, and so their sales taxes would need to piggyback on the state tax. Another regime might treat tribes as states, thus requiring a tribe to comply with SSUTA in the same way as a state that only imposes a state level tax. Representation and voting are major issues since there are over 400 tribes but currently only 23 member states.

Certified Automated System (CAS) to perform only the tax calculation function – to calculate the tax due on each transaction. A CAS is software certified under the SSUTA that calculates the tax that each jurisdiction imposes on a transaction, determines the amount of tax to remit to the appropriate state, and maintains a record of the transaction. With model 3, a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.

For all three models, member states provide monetary allowances to sellers that *voluntarily* remit taxes; allowances are not paid to sellers that are required by current law to remit taxes (Sections 601 – 604). These allowances are intended to offset costs that sellers incur in collecting and remitting taxes. For sellers using a CSP, allowances are a percentage of taxes remitted; allowances are thus distributed among states in relation to the taxes collected in the states.[14] For model 2 voluntary sellers using a CAS, monetary allowances are a percentage of the tax revenue they generate for each a member state. Each state thus contributes to the allowances in proportion to the revenues it receives. Monetary allowances are to be paid to sellers for a period not to exceed twenty-four months following their registration through the SSUTA's central registration process. After this twenty-four month period, sellers are only entitled to vendor discounts available under each member state's law at the time the base payment rate expires. Monetary allowances for model 3 sellers and all sellers other than model 1 and 2 sellers are essentially the same as the allowances for model 2 sellers. In addition to these allowances, Section 604 requires each state that elects origin-based sourcing under Section 310.1 to provide compensation for the incremental expenses taxpayers incurr in establishing or maintaining a uniform origin system for administering, collecting, and remitting sales and use taxes on origin-based sales.

Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. Model 1 sellers that use a Certified Service Provider (CSP) are not audited, but the CSP is audited for proper mapping of transactions and contract compliance. Model 2 and Model 3 sellers are audited by the states to which they pay taxes. States may conduct joint audits of large multi-state businesses.

Simplified exemption administration. For use- and entity-based exemptions, purchasers have one uniform exemption certificate they can use in all participating states, and they can use either the paper version or the electronic version. States must also have simplified exemption processing. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Instead, purchasers will be responsible for paying the tax, interest and penalties for claiming incorrect exemptions (Section 316).

Amnesty. A member state must grant amnesty to a seller for taxes on sales made during the period the seller was not registered in the state, provided that the seller registers within twelve months of the effective date of the state's participation in the SSUTA (Section 402). Compliance with section 402 also requires each seller to collect and remit applicable state and

[14] For a given seller, the allowance is 8 percent of the first $250,000 owed to a state, 7 percent of the next $750,000 owed, 6 percent of the next $1.5 million, 5 percent of the next $2.5 million, 4 percent of the next $5 million, 3 percent of the next $15 million, and 2 percent of taxes owed in excess of $25 million (Hellerstein and Swain (2006, p. 8-1)).

local sales and use taxes *to all member states* for at least 36 months following the seller's registration date.

State funding. To reduce the financial burdens on sellers (taxpayers), states must pay some of the costs of the technology required by the SSUTA – centralized electronic registration system, electronic tax payments, software that determines tax liability, fees to certain providers, SSTP membership fee.

Remote sellers. Sellers that do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress enacts laws requiring collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications. Registration by a seller to voluntarily collect sales and use taxes will not be taken as evidence that it should pay business activity taxes, such as the corporate franchise or income tax.

III. Modifying New Mexico's GRT and Compensating Taxes for the SSTP

This section discusses issues and questions that are likely to arise as New Mexico considers whether to participate in the SSTP as a full member.[15] The main advantages to New Mexico of doing so would be simplified compliance for its taxpayers, possibly some reduction over time in the State's administrative costs,[16] and some additional revenue from sales into New Mexico by out-of-state businesses.[17] Also, each additional state's participation in the SSTP strengthens the case for federal legislation that would require out-of-state sellers to collect the sales tax on sales into a state, essentially rendering the *National Bellas Hess* and *Quill* decisions moot. Passing such federal legislation would increase the payoff to participation in SSTP, in both increased revenue and decreased administration costs.

To realize these and other advantages, New Mexico would have to change the statutes governing its gross receipts and compensating taxes to satisfy the requirements of the SSUTA. The SSUTA does not define the taxpayer as either the seller or the buyer, thereby allowing member states to place statutory liability for paying the tax on either buyers or sellers.[18]

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[15] This discussion of issues faced by New Mexico if it chooses to join the SSTP draws on previous analyses by O'Neill (2003), Nunns (2007) and Clifford (2008).

[16] Reporting and processing withholding, leased vehicle surcharge, leased vehicle gross receipts tax, and possibly governmental gross receipts on a separate form may increase on-going costs. The SSUTA does not *require* member states to allow local option compensating taxes. However, if New Mexico chooses to allow local option compensating taxes, implementing them will increase compliance and administrative costs.

[17] We do not know how much revenue New Mexico would gain from remote sellers as a full member of the SSTP. However, Bruce et al. (2009) estimate New Mexico's 2010 state and local sales tax loss from failing to fully tax e-commerce transactions at $91.1 million out of a potential $361.6 million. This estimate does not include the revenue loss from failing to tax other remote sales such as mail and telephone orders and deliveries across state lines by unregistered businesses.

[18] As a practical matter, sellers have been obligated to collect sales taxes even when statutory liability is on the buyer.

Therefore, New Mexico can continue to define its GRT as a business privilege rather than a sales tax, with the liability for paying the tax placed on the seller (vendor). With this definition, New Mexico can continue to tax vendors' sales of goods and services to the federal government; taxes on such sales are currently a significant source of revenue. Adjustments would have to be made in the compensating tax which currently is not collected on consumer purchases and excludes services. A decision would also have to be made about whether and how a compensating tax can be levied by local governments.

The State would incur one-time switch-over and setup costs. It would have to create and maintain required databases – the *taxability matrix* that shows which products are taxed and the *rates and boundaries database* that shows the local tax rate and boundary for each local jurisdiction. These data are available but would have to be put in appropriate form after required statutory changes. Local tax rate assignments, based on zip codes and addresses or other information, would be required. The State would have to acquire required data processing equipment and software. It would have to identify and enter into appropriate contracts with Certified Service Providers and Certified Automated Systems. And it would have to design appropriate forms for registration, exemptions, etc. and adjust staffing and job descriptions.[19] Apart from these transition costs, continuing administrative costs would likely be no greater than, and perhaps less than, for the current GRT.[20]

Achieving more complete taxation of sales into New Mexico by out-of-state sellers would reduce the tax advantage they currently enjoy; it would level the playing field for in-state and out-of-state sellers. Although compliance would be simplified, current taxpayers would incur initial increases in compliance costs as they adopt to required procedures and software, but most should not have higher costs after transition to the requirements of the SSUTA. And after this transition, compliance costs should be lower for current taxpayers who sell out-of-state. Remote sellers that begin remitting taxes after not doing so would of course incur higher compliance costs, both initially and over time.

Revenue from taxes on sales into New Mexico by out-of-state sellers would increase; beyond that it is unclear how the SSUTA requirements would affect total revenue. Some changes in the definition of taxable products and services required by Section 327 and Appendix C may increase revenue, while others reduce revenue, with the balance being uncertain. Removing partial deductions would increase revenue, but the legislative response to prohibition of partial deductions could be to allow full deductions, which would decrease revenue. Complying with the prohibition of thresholds and caps could also affect revenue. In short, then, the adjustments New Mexico would have to make to meet the SSUTA requirements could either increase or decrease revenue.[21] How meeting the SSUTA requirements would alter the distribution of tax burdens is also uncertain, but any change seems unlikely to be significant.

[19] The Simplified Electronic Return (SER) required for the SST is already designed, but processing systems will have to be changed to process the form.

[20] See Isaacson (2003) for a less sanguine view of the accomplishments represented by the SSTP and the advantages of participating in it. Some of the problems he identified in 2003 have been remedied.

[21] Clifford (2008) estimates revenue gains for New Mexico of $11 million, but notes that some other studies estimate a greater revenue gain.

Required changes

Following are the main changes required to align New Mexico's gross receipts and compensating taxes with the SSUTA.

Sourcing. Origin sourcing governs New Mexico's gross receipts taxation of most transactions. The problems and revenue shifts arising with destination sourcing of local taxes have therefore been a barrier to New Mexico becoming a full member of the SSTP. However, this barrier is eliminated by Section 310.1, which allows origin sourcing for all intra-state taxes.

Uniform tax bases. Section 302 requires that a state and its local governments use the same tax base unless otherwise prohibited by federal law. Although New Mexico's local governments do not now have authority to levy a compensating or use tax, the SSUTA would allow but not require them to do so. New legislation could allow a locality to levy the compensating tax on imports to the locality that are also imports to the State, but not on imports to the locality from other localities.

Product definitions. Definitions of products and services subject to tax would have to be the definitions specified by SSUTA, which would apply in all participating states. Appendix C Parts II and III (B) specify categories of related consumer goods, such as clothing, computer-related products, and food and health care products. Except as specifically provided in Section 316 (exemptions) and Section 332 (specified digital products), all items within a category must be treated the same way, either all taxed or all exempt. However, uniform treatment of products in the Part III (B) categories is required only for a sales tax holiday. New Mexico's GRT does not comply with these restrictions. It currently taxes some products in the same group differently; for example, it exempts prescription drugs but taxes most of other items in the health care products group. Statutory changes would be required to meet these requirements.

Other definitions. Section 327 requires that when any term defined by the SSUTA Library of Definitions (Appendix C) appears in the member state's own sales or use tax law, the member state must use the library definition. A member state may not use a library-defined term in a way contrary to the library definition. Some of New Mexico's definitions of taxed products would have to be changed to meet this requirement. Because the restrictions on product definitions set out in Section 327 and Appendix C would alter the tax base, they could also affect revenues, either increasing or decreasing them. These restrictions would also limit New Mexico's future flexibility in defining taxable products and services.

Taxpayer (seller) registration. Registration in one state constitutes registration in all member states under SSUTA (Section 303). Online registration is to be provided for (Section 401). New Mexico does not have but would have to develop an arrangement for sharing registrations with other states. This would not be a major adjustment since remote sellers are currently registering with the SST office on the Centralized Registration System.

Taxability matrix. New Mexico would have to develop, maintain, and make available electronically the taxability matrix required by Section 328.

Local rates and boundary databases and notification of changes. The State would be required to assemble, maintain, and make available to taxpayers databases on local taxing jurisdictions and rates. Section 305 sets out requirements for notifying local taxpayers about rate changes, as well as the databases that must be developed and maintained. Section 306 frees taxpayers of liability for collecting the wrong amount of tax when a database is in error. Section 307 requires downloadable databases, which may be provided by the state or by a vendor designated by the state.

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New Mexico does not now maintain and publish the type of rates-boundaries database required by SSUTA, so complying could require considerable initial effort. More specifically, New Mexico has address-based location codes that vendors use to determine the local tax rate(s) to be applied. There is only one code for each in-state location except for locations on Native American lands where a pueblo, tribe or Nation has a cooperative agreement with the State.[22] The lands of Native American pueblos, tribes and Nations are referred to as "tribal lands." Two codes are currently necessary for taxes collected on tribal lands because the distribution of tax revenues depends on the whether buyers are tribal entities or tribal members living on their tribal land in which sales occur. The additional code distinguishes between tribal entities and members and non-tribal entities and members. When buyers are tribal entities or members, all of the revenues go to that pueblo, tribe or Nation; when they are not tribal entities or members, the revenues are split (in most agreements 75% to the pueblo, tribe or nation and 25% combined to the State, county, and municipality).

Providing the required database will entail continuing as well as one-time setup costs. In particular, providing the detail required for some location codes (such as Tax Increment Development Districts, Water and Sanitation Districts, and construction locations) will require an addressed-based database, since New Mexico's location codes cannot always be uniquely defined by 9-digit zip codes. But providing the database will, as intended by the SSUTA, simplify compliance, and it may also improve administration of local taxes by assigning rates more accurately. The SSUTA notification requirements can easily be met.

Multiple rates. New Mexico complies with the limitations on multiple rates (Section 308) except for partial deductions, which effectively cut rates. The partial deductions are 50% of gross receipts from sales of agricultural equipment and vehicles (7-9-62), 50% of gross receipts of for-profit hospitals (7-9-73.1), 50% compensating tax deduction for agricultural equipment and vehicles (7-9-77), and partial deductions for the sale and use of jet fuel (7-9-83 and 7-9-84). To comply fully with the requirements of the SSUTA, New Mexico would have to eliminate these deductions and forgo similar deductions in the future. It would also have to forgo use of caps and thresholds which in effect create multiple rates. As a full member, the State would therefore lose some flexibility that it currently enjoys in setting rates to promote non-revenue objectives. Like the State government, under SSUTA local governments can have only one rate and that rate must

[22] There are currently two out-of-state location codes: the regular out-of-state code and a separate code for sales of research and development services. If a tribal entity does not have an agreement with the State taxpayers report with the normal State code (usually the appropriate remainder-of-county code) and are liable for any applicable taxes imposed by tribal entities such as the Navajo Business Activity Tax and Navajo Sales Tax.

be the same for the sales and compensating taxes if both are levied. Local rates can vary across jurisdictions.

Enactment and administration of exemptions. New Mexico would have to make some adjustments in rules governing exemptions, broadly defined to include deductions and exclusions and their administration, to comply with SSUTA Sections 316 and 317. Adding a regulation under section 7-9-43 would allow New Mexico taxpayers, once registered, to use either the NTTC or the SST certificate. The regulation would be similar to the one that authorizes the use of MTC (Multistate Tax Commission) certificates.

Uniform returns and rules for remittances. Section 318 requires only one return per period for all jurisdictions within the state. Section 319 specifies rules governing remittances. Section 403 specifies alternative methods of remitting payments. New Mexico would need to adopt these payment alternatives and design returns consistent with Section 318.

Rules for recovery of bad debts. New Mexico would have to make some adjustments to comply with section 320, which specifies rules for recovery of bad debt.

Sales tax holidays. Section 322 sets out detailed conditions for sales tax holidays, but they are all relatively simple to comply with. Adjustments to bring New Mexico's rules in line with section 322 should be relatively straight forward.

Monetary allowances. Monetary allowances to offset some of taxpayers' compliance costs must be provided as defined in sections 601, 602, and 603. Legislative action would be required to meet these requirements.

Amnesty. As a member state, New Mexico would be required to grant amnesty to a seller for taxes on sales made during the period the seller was not registered in the state, provided that the seller registers within twelve months of the effective date of New Mexico's participation in the SSUTA (Section 402). However, there is the question of whether complying with this provision would violate the anti-donation clause in the New Mexico Constitution (Nunns (2007)). This question would have to be resolved. Section 402 would also provide a significant benefit to New Mexico as a full member state. Specifically, it requires each the seller to remit state and local sales and use taxes for at least 36 months following the seller's registration date *to all member states*, even those states in which it does not have nexus. *Therefore, any remote seller that registers under the SSUTA will be required to collect and remit taxes on sales into New Mexico if New Mexico is a member state.*

Local government adjustments. Allowing origin sourcing of transactions for purposes of collecting local taxes removes the primary complication faced in bringing local taxes into compliance with the SSUTA. Once the State has adjusted to the requirements of the SSUTA, bringing local government taxes and procedures into compliance should not be a serious problem. Also, local governments stand to gain revenue from more complete taxation of sales by remote sellers.

IV. Summary

The SSTP is a work in progress. Member states continue to negotiate now to handle difficult issues. But the system is workable and working. The SSUTA is fully implemented in the 19 full-member states, and that number is expected to increase by 3 by July 1, 2009. In addition, 11 states are considering bills to conform to the SSUTA in 2009. As the number of states implementing the SSUTA increases, compliance costs for remote sellers decrease, weakening the case against federal legislation that would require remote sellers to collect the sales taxes applicable to their sales. Such legislation, if enacted, would be a major, if not the most important, payoff to the SSTP.

The payoffs to New Mexico of joining these states and participating in the SSTP as a full-member include simplified compliance for its taxpayers, possibly some reduction over time in the State's administrative costs, and some additional revenue from sales into New Mexico by remote sellers (out-of-state businesses that do not have nexus in New Mexico). Current taxpayers would incur initial increases in compliance costs as they adopt required procedures and software, but their continuing compliance costs might be lower. Remote sellers that currently remit taxes to New Mexico should also face lower compliance costs over the long run after initial set-up costs. Remote sellers that currently do not remit taxes but choose to do so once New Mexico is a full member would of course incur higher costs, both initially and over time. Participating would not require significant departures from the current GRT base, but product definitions would have to conform to SSUTA requirements. Achieving more complete taxation of sales into New Mexico by remote sellers would reduce the tax advantage they currently enjoy over in-state sellers. Adopting the SSUTA may also reduce litigation costs, for example by applying its definitions, rules, and procedures to work through and settle the problems of taxing cross-border sales. The alternative is for New Mexico to incur the costs of independently dealing with these matters.

Realizing these payoffs would entail one-time switch-over costs. The State would have to modify statutes, create required databases, install required data processing equipment and software, modify forms and procedures used in tax administration, and identify Certified Service Providers and Certified Automated Systems. Following these transition costs, continuing administrative costs would likely be no greater than, and perhaps less than, for the current GRT.

In becoming a full member, the State would be giving up some of its sovereignty and flexibility in taxation in order to obtain the (presumed net) benefits of membership. To conform to the requirements of the SSUTA, New Mexico would have to remove special rules now in effect (e.g., partial deduction for hospitals, and other deductions, caps and thresholds), and forgo the flexibility of enacting such rules in the future. Also, New Mexico would have to comply with the restrictions on product definitions set out in Appendix C, thereby losing flexibility in defining taxable products and services. It would, however, continue to have flexibility in taxing products not included in Appendix C.

The revenue effect of full membership is uncertain. The main gain would be from increased taxation of sales into New Mexico by remote vendors. While joining the SSTP will have an uncertain effect on total tax revenue, it seems unlikely to significantly alter the distribution of tax burdens among New Mexicans.

References

Clifford, Thomas. “Streamlining New Mexico’s Sales and Use taxes: Major Policy Issues.” Presentation to 2008 NMTRI Annual Tax Policy Conference, May 1, 2008.

Bruce, Donald, William F. Fox and LeAnn Luna. “State and Local Government Sales Tax Revenue Losses from Electronic Commerce.” State tax Notes Vol. 52, No. 7, May 18, 2009, pp. 537-557.

Fox, William F., and John A. Swain. “The Federal Role in State Taxation: A Normative Approach.” *National Tax Journal* 60 No. 3 (September, 2007): 611-630.

Isaacson, George S. “A Promise Unfulfilled: How the Streamlined Sales Tax Project Failed to Meet Its Own Goals for Simplification of State Sales and Use Taxes.” *State Tax Notes* Vol. 30 (October 10, 2003).

McLure, Charles E. Jr. and Walter Hellerstein. “Congressional Intervention in State Taxation: A Normative Analysis of Three Proposals.” *State Tax Notes* Vol. 31 (February 26, 2004).

Nunns, Jim. “Streamlined Sales Tax Project – Update.” N.M. Taxation and Revenue Department. Presentation to the Revenue Stabilization and Tax Policy Committee, September 27, 2007.

O’Neill, James P. “The Streamlined Sales and Use Tax Agreement and New Mexico’s Gross Receipts and Compensating Taxes.” Presentation to Blue Ribbon Tax Reform Commission (May 22-23, 2003). http://nmlegis.gov/lcs/bluetaxdocs/Streamlined.pdf. Appendix A at: http://nmlegis.gov/lcs/bluetaxdocs/Appendixa.pdf
Appendix B at: http://legis.state.nm.us/lcs/bluetaxdocs/StreamlinedTaxAgreement.pdf

Streamlined Sales Tax Governing Board. “White Paper on Streamlining State Sales Taxes.” http://www.streamlinedsalestax.org/DOCUMENTS/White%20papers/SST%20white%20paper.pdf

Streamlined Sales and Use Tax Agreement. September 5, 2008. http://www.streamlinedsalestax.org/documents/sstua/ssuta%20as%20amended%209-05-08.pdf

Swain, John. "Local Tax Sourcing and the Streamlining Movement." *State Tax Notes*, Vol. 41 (Sept. 4, 2006).

Swain, John A. and Walter Hellerstein**. “**The Streamlined Sales and Use Tax Agreement's Sourcing Rules.” *State Tax Notes,* Vol. 34, No. 6 (November 8, 2004).

Swain, John A. and Walter Hellerstein. “The Political Economy of the Streamlined Sales and Use Tax Agreement.” *National Tax Journal* 58 No. 3 (September, 2005): 605-619.

Tax Analysts. “Governing Board Director: Eleven States to Consider Adopting Agreement.” *State Tax Notes,* Vol. 51, No. 6 (February 9, 2009).